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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

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6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 v.

9 EDWIN ARNOLD, JR.,

10 Defendant.
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Case No. 2:17-cr-00042-APG-DJA

REPORT AND RECOMMENDATION

12 Presently before the Court is Defendant Edwin Arnold's Motion to Suppress (ECF No.
13 180), filed on January 13, 2021. The Government filed a Response (ECF No. 182) on January 27,
14 2021. Defendant did not file a Reply. The Court finds this matter properly resolved without a
15 hearing.

16 **I. BACKGROUND**

17 Defendant again moves to suppress statements he made to law enforcement officers on
18 January 26, 2017 along with the currency found shortly after those statements - as fruits of the
19 poisonous tree. (ECF No. 180). He argues that in response to his prior motion to suppress on this
20 issue, the Government previously conceded that it would not use any statements made by
21 Defendant while in FBI custody or any evidence derived thereof at trial. As such, Defendant
22 claims that the doctrine of judicial estoppel should apply to hold the Government to that position.
23 Further, Defendant argues that his statements made after his arrest must be suppressed because he
24 did not receive a constitutionally adequate *Miranda* warning in violation of his Fifth and Sixth
25 Amendment rights. Defendant also argues that the currency, which was allegedly from the bank
26 robbery for which he is charged and was found after a search of his grandmother's residence
27 where he was living, must also be suppressed as fruits of the poisonous tree. He claims that the
28 exclusionary rule reaches this derivative evidence.

1 The Government responds that the Motion should be denied because it is redundant given
2 that the Government has already represented that it will not admit Defendant's custodial
3 statements during its case-in-chief. (ECF No. 182). Also, the Government highlights that the
4 Court already ruled that those statements were voluntarily made and therefore admissible for
5 impeachment. Moreover, the Government indicates that it will also not seek to admit evidence of
6 the robbery proceeds and apology letters during its case-in-chief. However, the Government
7 reserves the right to seek to admit the statements and derivative evidence if Defendant opens the
8 door and makes it relevant and admissible.

9 **II. DISCUSSION**

10 On May 8, 2017, Defendant filed a Motion to Suppress that targeted the statements he
11 made to FBI Special Agent Schlumpf. (ECF No. 38). Defendant argued that he did not
12 understand his *Miranda* warnings and that these statements should therefore be suppressed. In
13 response, the Government argued the Motion should be denied as moot because the Government
14 did not intend to introduce the statements made by Defendant in its case-in-chief. (ECF No. 42).
15 On June 5, 2017, Judge Hoffman issued a Report and Recommendation that recommended that
16 the Motion be denied as moot given the Government's concession it does not intend to introduce
17 the statements or any evidence derived from them in its case-in-chief. (ECF No. 49). On July 13,
18 2017, Judge Gordon adopted the Report and Recommendation after neither party objected. (ECF
19 No. 52).

20 On October 23, 2019, the Government filed a Motion in Limine seeking to introduce
21 Arnold's voluntary statements as potential impeachment evidence. (ECF No. 145). Defendant
22 opposed the Motion by arguing the *Miranda* warnings were not sufficient. (ECF No. 146). The
23 Government replied that the statements were voluntarily-made and should be available for the
24 limited purpose of impeachment. (ECF No. 147). Judge Gordon conducted an evidentiary
25 hearing on December 18, 2019. (ECF No. 154). After hearing testimony from FBI Special Agent
26 Schlumpf and Defendant, Judge Gordon found that the statements would be admissible as
27 impeachment if Defendant testified differently than what was in his statements given to the
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1 agents. Judge Gordon did not address the issue of the admissibility of the currency or any
2 derivative evidence because the parties did not raise that issue at that time.

3 Having carefully reviewed and fully considered the parties' arguments, the Court finds
4 that Defendant's renewed Motion to Suppress is moot given the Government's re-asserted
5 representations that it will not introduce the statements in its case-in-chief. Further, Judge
6 Gordon has already ruled that those statements would be admissible as impeachment. (ECF No.
7 154). Filing a renewed Motion to Suppress is not an appropriate way to challenge that decision or
8 seek reconsideration of Judge Gordon's Order that the statements may be utilized for
9 impeachment evidence.

10 As for the derivative evidence, like the currency, the Court will again accept the
11 Government's representation that it will not introduce the currency and derivative evidence in its
12 case-in-chief. As such, the Court need not reach the issue of whether the currency would be
13 admissible at this time. Indeed, if the Government believes that Defendant has opened the door to
14 the admissibility of the currency, then it may raise the admissibility of the derivative evidence
15 with the District Judge at that time.

16 **III. CONCLUSION AND RECOMMENDATION**

17 IT IS THEREFORE RECOMMENDED that Defendant Arnold's Motion to Suppress
18 Evidence (ECF No. 180) be **DENIED as moot**.

19 **IV. NOTICE**

20 This report and recommendation is submitted to the United States District Judge assigned
21 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
22 may file a written objection supported by points and authorities within fourteen days of being
23 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
24 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d
25 1153, 1157 (9th Cir. 1991).

26 DATED: February 23, 2021

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28 DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE